

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 76

HOUSE BILL 2323

AN ACT

AMENDING SECTION 33-423, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-424; RELATING TO REAL PROPERTY DISCLOSURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-423, Arizona Revised Statutes, is amended to
3 read:

4 33-423. Disclosure; reports; indemnity; applicability;
5 violation; classification

6 A. A disclosure report authorized pursuant to this section may be
7 provided to the BUYER OR seller of real property by a third party as
8 authorized by the BUYER OR seller and shall be based on officially adopted
9 and electronically posted or otherwise readily available governmental maps or
10 information that discloses whether the real property is subject to any ONE OR
11 MORE of the following:

12 1. Special flood hazard areas designated by the federal emergency
13 management agency pursuant to 42 United States Code chapter 50.

14 2. Military airports ~~or~~ AND ancillary military facilities as defined
15 in section 28-8461 or as disclosed pursuant to section 28-8484 or 32-2113.

16 3. Military training routes as shown in the map produced pursuant to
17 section 37-102 and military restricted airspace as shown in the map produced
18 pursuant to section 37-102.

19 4. Public ~~or~~ AND private airports that are approved by the federal
20 aviation administration.

21 5. Expansive soils as shown on maps issued by the natural resource
22 conservation service or on other officially adopted and readily available
23 governmental maps.

24 ~~6. Soils subject to fissures as shown on maps issued by the Arizona~~
25 ~~geological survey or on other officially adopted and readily available~~
26 ~~governmental maps.~~

27 6. FISSURES AS SHOWN ON EARTH FISSURE MAPS ISSUED BY THE ARIZONA
28 GEOLOGICAL SURVEY OR PURSUANT TO SECTION 27-152.01, PARAGRAPH 3.

29 7. Special tax assessment areas OR TAXING AUTHORITY AND AMOUNT OF
30 SPECIAL ASSESSMENTS IN ADDITION TO AD VALOREM TAXES as shown in the current
31 tax records of the applicable county assessor.

32 8. Radon gas potential zones as shown on current maps issued by the
33 United States environmental protection agency.

34 9. Environmental hazard superfund sites ~~as shown in reports from the~~
35 ~~United States environmental protection agency or on maps issued by the~~
36 ~~department of environmental quality.~~ INCLUDING THE SITES LISTED IN THE
37 ARIZONA SUPERFUND PROGRAM LIST AND THE WATER QUALITY ASSURANCE REVOLVING FUND
38 REGISTRY, OR LISTED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
39 INCLUDING THE NATIONAL PRIORITIES LIST, THE COMPREHENSIVE ENVIRONMENTAL
40 RESPONSE COMPENSATION AND LIABILITY INFORMATION SYSTEM DATABASE OR ON MAPS
41 ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR EQUIVALENT DATABASES OF
42 THOSE SITES.

43 10. ANY OTHER CONDITION THAT AFFECTS THE REAL PROPERTY THAT THE BUYER
44 OR SELLER AUTHORIZES AND THE THIRD PARTY PROVIDER AGREES TO PROVIDE IN A
45 THIRD PARTY PROVIDER DISCLOSURE REPORT.

1 B. For any third party provider of information as prescribed by this
2 section, the following ~~applies~~ APPLY:

3 1. A seller OR BUYER shall not be required to provide the written
4 disclosure provided by this section to an insurance company, a lender or a
5 governmental agency.

6 2. The third party provider shall carry ERRORS AND OMISSIONS insurance
7 coverage with limits of at least ~~ten~~ ONE million dollars per occurrence AND
8 IN AN AGGREGATE OF AT LEAST TEN MILLION DOLLARS. A PERSON WHO VIOLATES THIS
9 PARAGRAPH IS GUILTY OF A CLASS 1 MISDEMEANOR.

10 C. If an action is brought as a result of an error, inaccuracy or
11 omission in the disclosure made only by ~~the~~ A third party provider WHO
12 PROVIDES INFORMATION PURSUANT TO SUBSECTION A OF THIS SECTION, the third
13 party provider shall provide a defense against the action, shall indemnify
14 ~~the person for any judgment rendered~~ BUYER OR SELLER WHO AUTHORIZED THE
15 DISCLOSURE REPORT AND PERSONS LICENSED PURSUANT TO TITLE 32, CHAPTER 20 WHO
16 REPRESENT THE BUYER OR SELLER FOR ANY JUDGMENT RENDERED and shall reimburse
17 reasonable attorney fees and costs incurred in defending the action, unless
18 ~~the person~~ BUYER, SELLER OR AGENT FOR THE BUYER OR SELLER had knowledge of
19 the error, inaccuracy or omission or ~~the person~~ BUYER, SELLER OR AGENT FOR
20 THE BUYER OR SELLER modified the disclosure and the modification resulted in
21 the error, inaccuracy or omission. Nothing in this section shall be
22 construed to prohibit a third party provider of information from agreeing by
23 contract that the third party provider shall indemnify a person to a greater
24 extent than is required by this section.

25 D. If information that is disclosed pursuant to this section is
26 subsequently rendered inaccurate as a result of any governmental action, map
27 revision, changed information or other act or occurrence after the delivery
28 of the disclosure, no person is liable for the information that was disclosed
29 unless the person had knowledge of the error, inaccuracy or omission.

30 E. This section shall not be construed to create a cause of action for
31 the use of maps or other information pursuant to this section. This section
32 does not apply to the sale of real property by any person pursuant to section
33 32-2183 or section 32-2195.03, or any affiliate of that person.

34 F. THIS SECTION DOES NOT OBLIGATE ANY PERSON TO PROVIDE OR PURCHASE A
35 DISCLOSURE REPORT THAT IS THE SUBJECT OF THIS SECTION.

36 G. THE LISTING OF A CONDITION IN SUBSECTION A OF THIS SECTION OR IN A
37 THIRD PARTY PROVIDER DISCLOSURE REPORT DOES NOT BY ITSELF MAKE THAT CONDITION
38 MATERIAL OR IMMATERIAL TO A PARTICULAR REAL ESTATE TRANSACTION. THE
39 MATERIALITY OF ANY DISCLOSURE IS GOVERNED AS OTHERWISE PROVIDED BY LAW.

40 Sec. 2. Title 33, chapter 4, article 2, Arizona Revised Statutes, is
41 amended by adding section 33-424, to read:

42 33-424. Representation of legal requirement; enforcement;
43 private action; classification

44 A. IT IS UNLAWFUL FOR A THIRD PARTY PROVIDER OFFERING A DISCLOSURE
45 REPORT PURSUANT TO SECTION 33-423 TO REPRESENT IN MARKETING MATERIALS,
46 CONTRACTS OR BY ANY OTHER MEANS ANY OF THE FOLLOWING:

1 1. THAT SUCH A DISCLOSURE REPORT IS REQUIRED BY ANY LAW TO BE
2 PURCHASED.

3 2. THAT A BUYER, A SELLER OR A PERSON LICENSED PURSUANT TO TITLE 32,
4 CHAPTER 20 WHO REPRESENTS A BUYER OR SELLER IS REQUIRED TO COMPLY WITH
5 SECTION 33-423 BY PURCHASING A THIRD PARTY DISCLOSURE REPORT.

6 3. THAT THE THIRD PARTY PROVIDER OFFERS PROTECTION FROM LIABILITY FOR
7 OR PROVIDES INFORMATION ABOUT PROPERTY CONDITIONS THAT ARE NOT THE SUBJECT OF
8 THE THIRD PARTY PROVIDER REPORT OR THAT ARE NOT WITHIN THE CURRENT ABILITY OF
9 THE THIRD PARTY PROVIDER TO PROVIDE.

10 B. AN ACT OR PRACTICE IN VIOLATION OF THIS SECTION OR SECTION 33-423,
11 SUBSECTION B, PARAGRAPH 2 IS SUBJECT TO ENFORCEMENT THROUGH PRIVATE ACTION
12 AND PROSECUTION BY THE ATTORNEY GENERAL OR BY THE COUNTY ATTORNEY OF THE
13 COUNTY IN WHICH THE REAL PROPERTY IS LOCATED.

14 C. A PERSON WHO RECEIVES MARKETING MATERIALS, CONTRACTS OR OTHER
15 COMMUNICATION IN VIOLATION OF THIS SECTION MAY BRING AN ACTION PURSUANT TO
16 THIS SECTION IN ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH
17 THE REAL PROPERTY IS LOCATED.

18 D. A THIRD PARTY PROVIDER WHO OFFERS A DISCLOSURE REPORT PURSUANT TO
19 SECTION 33-423 AND WHO IS FOUND TO HAVE VIOLATED THIS SECTION IN ADDITION TO
20 ANY OTHER REMEDIES PROVIDED BY LAW, IS LIABLE TO THE PARTY RECEIVING THE
21 MARKETING MATERIALS, CONTRACTS OR OTHER COMMUNICATION FOR DAMAGES OF NOT MORE
22 THAN TWO THOUSAND DOLLARS PER OCCURRENCE. IN ANY ACTION BROUGHT PURSUANT TO
23 THIS SECTION THE PREVAILING PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES
24 AND COSTS.

25 E. A PERSON WHO VIOLATES SUBSECTION A OF THIS SECTION IS GUILTY OF A
26 CLASS 1 MISDEMEANOR.

APPROVED BY THE GOVERNOR APRIL 16, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 2007.